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Caroline Thomas Jacobs, Director
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505 Van Ness Avenue
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SUBJECT: Southern California Edison Company's Reply Comments Regarding Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2)

Director Thomas Jacobs,

In response to comments submitted by parties regarding Wildfire Safety Division's (WSD) proposed changes to the 2021 Safety Certification guidance served on May 11, 2021 (WSD Proposal), Southern California Edison (SCE) respectfully submits these reply comments.[1]

INTRODUCTION

Utilities must be financially healthy to provide safe, reliable, resilient and clean service at a reasonable cost to customers. The Legislature passed AB 1054 to support utility creditworthiness in the wake of devastating wildfires that left one utility bankrupt and battered the credit rating of others.[2] Consistent with the comprehensive statutory framework codified by AB 1054, customers and utility shareholders contributed to the Wildfire Fund to insure against the growing threat of catastrophic wildfires in a California-specific environment of inverse condemnation with strict liability. Safety certification is an important component—though not the only component—of this statutory framework designed to manage the very issue the Legislature and Governor's Office sought to prevent via AB 1054. Further, customers and utility shareholders have already contributed to the Wildfire Fund and could reasonably expect that withdrawals

[1] Where SCE has not addressed a particular party's comment, this should not be interpreted as SCE's agreement with that comment.

[2] "The establishment of a wildfire fund supports the credit worthiness of electrical corporations and provides a mechanism to attract capital for investment in safe, clean, and reliable power for California at a reasonable cost to ratepayers." AB 1054, §1(a)(5).

would be permitted under the statutory terms in effect at the time those contributions were made—changing the terms now creates instability and uncertainty. Finally, the compliance and oversight concerns raised by parties seeking to change the terms of the safety certification process are already addressed in other areas of the statutory framework. Therefore, parties' proposals to add more "good standing" and compliance requirements to the safety certification process should be rejected as misdirected and de-stabilizing.

Finally, it bears repeating that although it is associated with a relatively simple, straightforward, and forward-looking process, safety certification in and of itself does not give electrical corporations a "blank check" to recover all costs. Rather, an electrical corporation holding a valid safety certification at the time a fire was ignited obtains two discrete benefits, both of which it can lose depending on its conduct: (1) the electrical corporation's conduct is deemed reasonable *unless an opposing party creates a serious doubt as to the reasonableness of the electrical corporation's conduct,* at which time, the burden shifts back to the electrical corporation to dispel the doubt;[3] and (2) the amount of potential reimbursement to the Wildfire Fund is capped based on a formula tied to the electrical corporation's transmission and distribution rate base. The latter benefit is lost, however, if the Fund Administrator finds that the electrical corporation acted with conscious or willful disregard for the rights and safety of others.[4] And, as noted above, safety certification does not insure an electrical corporation against sanctions for substantial non-compliance with its WMP.

It is important to issue modified guidance that adheres to AB 1054 as expeditiously as possible, preferably before June 30, to prevent negative financial consequences—the regulatory discussion on this issue is already "creating some uncertainty around the application of AB1054."[5]

REPLY COMMENTS

1. Parties' Support for Additional "Good Standing" Requirements for Safety Certification Should Be Rejected Under Section[6] 8389(e)(2)

[3] § 451.1(c).

[4] § 3292(h)(3)(A).

[5] "The regulatory discussion on the [Wildfire Mitigation Plan (WMP)] and wildfire certification process is creating some uncertainty around the application of AB1054, especially as the CPUC proposed changes could create another layer of complexity in pro-forma compliance analysis. We recognize that the CPUC is working to bridge the stakeholder trust gap, but the current proposal could undermine statutory requirements and change the already un-tested wildfire liability mechanism." The Guggenheim Daily Transmission: IL, ED, EXC, NEE, EIX, PCG, SRE, VST, ERCOT, D, ES, DUK, OH, WEC (June 2, 2021).

[6] Where unspecified herein, "Section" or "§" refers to a section of the California Public Utilities Code.

TURN 's attempt to add a proof of implementation requirement to the "good standing" criteria for safety certification misconstrues the plain language of Section 8389(e)(2). The statute provides that "good standing… can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable."[7] TURN claims that the phrase "if applicable" means that good standing requirement "can only be satisfied… if such an assessment has taken place and *has been implemented*."[8] A simple reading of the statute shows there is no such requirement. Under the plain language of the statute, the electrical corporation need only *agree* to implement the findings of its most recent safety culture assessment (SAC), *not to have actually implemented those findings*. TURN fails to explain how the phrase "if applicable" opens the door to additional requirements such as proof of implementation.

The legislative history for AB 1054 also contradicts TURN's assertion that actual implementation must be demonstrated to meet the "good standing" requirement for safety certification. As PG&E points out in its opening comments, the legislative history demonstrates that initial language that would have required "substantial compliance . . . with the findings of [an electrical corporation's] most recent safety culture assessment" was explicitly rejected; instead the final version of the statute requires only that an electrical corporation "agreed to implement" its most recent safety culture assessment.[9] Substantial compliance is akin to proof of implementation – neither is required to demonstrate "good standing."

Because an agreement to implement the most recent SCA findings suffices to meet good standing, TURN's claim that satisfaction of the good standing requirement cannot be timely met under the WSD's schedule[10] is without merit. Rather, as the Coalition of California Utility Employees (CUE) points out, Section 8389(d)(4) required that the Commission approve a process for WSD to conduct annual SCAs for each electrical corporation no later than December 1, 2020. On November 19, 2020, the Commission approved the SCA process, which WSD began in March 2021 and expects to complete by the end of August 2021. "Because an electrical corporation can agree to implement the findings of its most recent SCA before it submits the 2021 safety certification request, this standard is applicable."[11] Thus, under the schedule set forth by WSD in the guidance, the safety culture assessment findings should be released before the request for safety certification is due, making it imperative for that SCA to be timely

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[7] § 8389(e)(2).

[8] TURN Opening Comments, p. 2 (emphasis added).

[9] PG&E Opening Comments, p. 4.

[10] TURN Opening Comments, p. 2.

[11] CUE Opening Comments, pp. 2-3.

completed. When it is, the electrical corporations will be in a position to agree to implement those findings before they submit requests for safety certification.

As indicated above, the correct reading of Section 8389(e)(2) is that an electrical corporation need only agree to implement its most recent safety culture assessment to meet the "good standing" requirement; the "can be satisfied" language provides a safe harbor. As stated in SCE's opening comments, in cases where the electrical corporation does not meet the good standing requirement through the safe harbor of agreeing to implement the most recent SCA findings, either because such findings from a recent SCA are not available or an electrical corporation cannot otherwise agree to implement them, the electrical corporation may be able to satisfy "good standing" as it has in the past, such as by furnishing documentation about its safety training and other policies; its plans for handling safety incidents in light of data on the number of reported ignitions, fatalities, damaged or destroyed structures related to wildfires alleged to be caused by utility infrastructure; worker and contractor fatalities and incidents since issuance of the previous Safety Certification and their connection to wildfires; and Commission investigations and court actions, if any, related to safety violations of the electrical corporation, including ongoing and closed investigations.[12] Again, this would be an *alternative* to the safe harbor of agreeing to implement the most recent SCA findings, *not an additional requirement*, which is not permitted under the statute.

Thus, proof of implementation and other additional good standing requirements proposed by TURN and other parties should be rejected.[13] *While the "can be" statutory language provides for alternative means of meeting the "good standing" requirement, it does not permit the imposition of additional requirements.*

2. MGRA's Support for a New Safety Certification Requirement that Electrical Corporations Demonstrate Proof of WMP Compliance Should Be Rejected Under Section 8389(e)(7)

MGRA's support for a new WMP compliance requirement for safety certification contradicts the plain language of Section 8389(e)(7). MGRA claims that the statute "leaves room for interpretation when it requires that 'the electrical corporation is

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[12] SCE Opening Comments, Attachment, p. 5.

[13] TURN Opening Comments, pp. 3-4; The Public Advocates Office (PAO) Opening Comments, pp. 2-3; Mussey Grade Road Alliance (MGRA) Opening Comments, p. 1 (generally supporting WSD's proposed changes); The Protect our Communities Foundation (PCF) Opening Comments, p. 1 (generally supporting WSD's proposed changes). Further, additional criteria that would deny good standing—and safety certification—because an electrical corporation has caused a fire simply makes no sense. As SCE pointed out in its opening comments, having a valid safety certification confers benefits on electric corporations who have been determined to cause a catastrophic wildfire. This, it is circular block certification based, in part, on the electrical corporation having caused a covered wildfire. Under this logic, no electrical corporation would have been or will be incentivized to contribute to the Wildfire Fund. SCE Opening Comments, p. 9.

implementing its approved wildfire mitigation plan'"[14] and on that basis supports WSD's proposal to add a compliance requirement that electrical corporations are "effectively" implementing their WMPs. On the contrary, the statutory language in no way lends itself to being construed as a WMP compliance requirement and/or requiring that "effective" implementation be demonstrated. Section 8389(e)(7) clearly requires that an electrical corporation "provide documentation" that it "is implementing its approved wildfire mitigation plan" and shows that *this requirement is satisfied by documenting that the required quarterly tier 1 advice letters have been submitted.*[15] MGRA's support for a new compliance requirement that utilities demonstrate that they are "*effectively* implementing their plan" contradicts that plain statutory requirement and should be rejected.

Compliance, while undoubtedly important, quite simply is not a part of the safety certification process; it was expressly not included among the steps for certification by the Legislature. However, as SCE, PG&E and SDG&E all point out in opening comments, compliance is covered in other statutes codifying AB 1054. The WSD can recommend enforcement actions for non-compliance pursuant to subsection Section 8389(g) and 8386.1. Section 8386.3(c) supports WSD's existing compliance process and the annual reports on compliance. In addition, the Legislature specifically added Section 8386.1, which allows the Commission to assess penalties on electrical corporations who fail to substantially comply with the plan. If the Legislature had intended WMP compliance to be an element of the safety certification process, presumably it would have included that requirement in subsection (e), rather than expressly providing a separate subsection with a separate resolution process. The term compliance, while elsewhere in the statutory framework, occurs nowhere in subsection (e). MGRA's support for a new compliance requirement as part of the safety certification thus contravenes AB 1054.

Further, as SDG&E pointed out in opening comments, in light of the size, scale, and complexity of the WMPs, WSD field audits and inspections could always find areas for improvement. MGRA (and WSD) do not clarify whether even a minor compliance issue could impact the grant of a safety certification. "It is precisely these sorts of subjective considerations that the Safety Certification process was designed to avoid. Section 8389(e) requires WSD to issue a Safety Certification if the electrical corporation meets the clear, straightforward, and forward-looking indicators that it is conducting its business in a prudent fashion. None of these requirements are grounded in a compliance review and the potential uncertainty that might result from such an addition."[16]

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[14] MGRA Opening Comments, p. 1.

[15] § 8389(e)(7).

[16] SDG&E Opening Comments, p. 6.

MGRA's attempt to burden the safety certification process with compliance requirements would transform a straightforward and clear process contemplated by AB 1054 into a lengthy and discretionary review into the electrical corporation's conduct under its WMP. This would introduce substantial uncertainty into the utilities' ability to obtain Safety Certification, undermining the purpose of AB 1054, and jeopardizing the financial health and stability of electric corporations in California.[17]

3. The Safety Certification Process Should Be Clarified as Soon as Possible, and the Process Should Remain Relatively Simple and Swift to Avoid the Financial Risk to Electrical Corporations Due to Uncertainty and Delay

Given the statutory language and legislative intent demonstrating safety certification is a simple, swift and forward-looking process, there is no support for TURN's assertion that "WSD should add to the schedule a date that allows non-utility commenters at least 30 days to respond to the utility submissions."[18] Parties already have had an opportunity to comment on utilities' WMPs, quarterly advice letters and executive compensation by the time utilities seek safety certification. The safety certification process merely requires utilities to document prior approval of WMPs and quarterly advice letters, among other relatively simple/forward-looking requirements. Giving parties yet another opportunity to comment on these previously resolved/uncontentious items is redundant and needlessly delays the process, creating uncertainty that contradicts the statutory framework and legislative intent to provide stability and protect the creditworthiness of utilities. While WSD previously has allowed a comment process at the safety certification process, its Proposed Changes do not do so and, for the above reasons, this comment process should either be removed entirely or narrowly tailored in scope and timeframe. Of course, if an electrical corporation's submittal is deemed incomplete, the electrical corporation should be given a reasonable opportunity to remedy the submission before final disposition. For the same reasons, discovery should not be permitted during the safety certification process, contrary to TURN's arguments.[19]

Such delays associated with comment periods for the safety certification, and the WSD's proposed schedule, would push safety certification well into the fire season of a given year. As SDG&E points out, WSD's schedule, which requires safety certification requests in September with a decision that calendar year, "contravenes the intentions of AB 1054, which set forth a timeframe for review and approval of the utilities' WMPs and the corresponding Safety Certification process that concludes prior to peak fire season. Conducting the annual Safety Certification review process during fire season (1) adds an additional layer of work and responsibility on the utilities, who should be completely focused on wildfire mitigation during this timeframe, and (2) inserts an additional layer of

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[17] SCE Opening Comments, p. 7.

[18] TURN Opening Comments, p. 5.

[19] TURN Opening Comments, p. 5.

risk in the Safety Certification review process."[20] This in turn creates uncertainty and risk to creditworthiness that AB 1054 seeks to address. While Section 8386.3(a) does permit WSD to extend the 3-month timeframe for WMP review with appropriate justifications, as occurred for this year, this delay should be avoided, to the extent possible. For 2022 and subsequent years, safety certification approval should be scheduled to occur by September of a given year, following WMP approval within the 90-day period set forth in Section 8386.3(a) and the safety certification process under Section 8389.

CONCLUSION

For the foregoing reasons, parties' support for additional "good standing" and new compliance requirements for safety certification should be rejected, the safety certification process should remain relatively simple, swift and forward-looking, and the WSD should clarify the process as soon as possible to avoid growing uncertainty and the accompanying risk and potential damage to the creditworthiness of electric corporations.

SCE appreciates the opportunity to submit its reply comments re WSD's proposed changes to the 2021 Safety Certification guidance.

Sincerely,

//s//
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[20] SDG&E Opening Comments, p. 7.